

HOUSE JOINT RESOLUTION NO. 40

INTRODUCED BY YOUNKIN, GALLUS

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN INTERIM COMMITTEE TO STUDY ISSUES ASSOCIATED WITH WATER RIGHTS FOR PRIVATE PONDS FOR FISH, WILDLIFE, RECREATIONAL, WETLAND, AESTHETIC, AND GRAVEL MINING USES; AND REQUESTING A REPORT OF THE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF THE STUDY TO THE 59TH LEGISLATURE AND THE GOVERNOR.

WHEREAS, Montana's scarce water resources are of vital importance to the state, its environment, and its citizens for existing and future prosperity; and

WHEREAS, as a result of Montana's arid climate, water has been appropriated from Montana's rivers and streams under the prior appropriation doctrine for more than 100 years; and

WHEREAS, many of Montana's river basins are now closed to new appropriations; and

WHEREAS, Montanans will increasingly find more basins closed by either the Legislature or the Department of Natural Resources and Conservation because of overappropriation of water; and

WHEREAS, continuing diversions from Montana's overappropriated rivers and streams can adversely impact historic water users; and

WHEREAS, continuing diversions from Montana's overappropriated rivers and streams can adversely impact existing wetlands, native fisheries, and other aquatic values; and

WHEREAS, the number of applications for new water rights for ponds in Montana has been increasing, even in closed river basins; and

WHEREAS, it is difficult to quantify the minimum or maximum amount of water needed for ponds for fish, wildlife, recreational, wetland, or aesthetic uses; and

WHEREAS, the impacts to a stream system resulting from a diversion of water from that stream for a pond can be much greater than the impacts resulting from an instream use of water that is nonconsumptive; and

WHEREAS, under Article IX, section 3, of the Montana Constitution, all waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law; and

WHEREAS, under Article IX, section 3, of the Montana Constitution, the Legislature shall provide for the administration, control, and regulation of water rights.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee to:

(1) evaluate whether or not water use for private ponds for fish, wildlife, recreational, wetland, or aesthetic uses should be considered a beneficial use of water under Montana law;

(2) if private ponds for fish, wildlife, recreational, wetland, or aesthetic uses are to be considered beneficial uses, evaluate whether or not criteria or limits should be established to determine the size of a pond or the amount of water used for a pond that can be considered a beneficial use;

(3) evaluate what measures, if any, are needed to address:

(a) the proliferation of private ponds in Montana that are being constructed without first seeking or obtaining water rights; and

(b) the proliferation of ponds associated with gravel mining operations;

(4) examine the definition of "nonconsumptive use" and:

(a) evaluate whether or not additional criteria should be established to determine whether or not a water use is a nonconsumptive use; and

(b) identify what presumptions, if any, should be applied to the term "nonconsumptive"; and

(5) evaluate any other issues related to the use of water for private ponds for fish, wildlife, recreational, wetland, aesthetic, or gravel mining uses.

BE IT FURTHER RESOLVED, that the interim committee seek information and ideas from the following parties in the process of evaluation and before reaching conclusions and making recommendations for future legislative action:

(1) the Department of Natural Resources and Conservation;

(2) the Department of Fish, Wildlife, and Parks;

(3) Montana water right holders and water users;

(4) organizations representing water right holders and water users, including but not limited to organizations representing agricultural water users, wildlife and wetland conservation interests, anglers, water-based recreational users, and water right consultants;

1 (5) organizations representing the land development industry and the real estate industry; and

2 (6) other interested persons or organizations.

3 BE IT FURTHER RESOLVED, that the interim committee may request assistance from any agency of
4 state government, the Montana University System, organizations, and knowledgeable citizens, in addition to
5 receiving staff support from the Legislative Services Division.

6 BE IT FURTHER RESOLVED, that the committee prepare a report of its findings, conclusions, and
7 recommendations by September 15, 2004, and submit the report to the 59th Legislature and the Governor.

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